

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF NEW YORK

3

UNITED STATES OF AMERICA

4
5 Vs.

**SENTENCING
MEMORANDUM
22CR186**

6 MICHAEL ANGSTENBERGER

7 Defendant

8

9

10 INTRODUCTION

11 This memorandum is being submitted for the Court's consideration
12 of the Defendant's request for a sentence that would be sufficient, but not
13 greater than necessary under the circumstances.

14 Procedural History

15

16 ARGUMENT

17 In the United States v. Booker 543 U.S. 220, 125 S. Ct. 738 (2005),
18 the United States Supreme Court rendered the United States Sentencing
19 Guidelines advisory. The Second Circuit has instructed that although
20 advisory, the sentencing court must still calculate the appropriate
21 sentencing range under the Guidelines, including any departure
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1
2 provisions. *United States v. Crosby*, 397 F.3d 103 (2d Cir. 2005). “Once an
3 applicable Guideline range has been determined, the sentencing judge will
4 have the duty, imposed by Section 3553(a)(4), to ‘consider’ it, along with
5 all of the factors listed in Section 3553(a).” *Id.* The Court must give due
6 consideration to the factors identified in 18 U.S.C. Sec. 3553(a) in order to
7 impose a sentence “sufficient, but not greater than necessary,” as is
8 required in accordance with the Supreme Court’s decision in *Booker*, 543
9 U.S. 220, and the Second Circuit’s decision in *Crosby*, 397 F.3d 103, and as
10 recently affirmed in *United States v. Ministro-Tapia*, 470 F.3d 137 (2nd Cir.
11 2006).
12

13 The law of this circuit has not been changed by *Rita v. United States*,
14 127 S.Ct. 2456 (2007). *Rita* recognized that courts could continue to apply a
15 more searching level of appellate review than a “presumption of
16 reasonableness.” The sentencing courts, applying the Guidelines in
17 individual cases may depart (either pursuant to the Guidelines, or, since
18 *Booker*, by imposing a non-Guideline sentence)... “The result is a set of
19 Guidelines that seek to embody the Sec. 3553(a) considerations, both in
20 principle and in practice.” *Id.* At 2458. Appellate “reasonableness”
21 review merely asks whether the trial court abused its discretion.” *Id.* At
22 2465.

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2 The Supreme Court issued two decisions; Gall v. United
3 States, 552 U.S., 128 S.Ct. 586 (2007), and Kimbrough v. United
4 States, 552 U.S., 128 S.Ct.558 (2007), which give the sentencing court
5 power to make an individualized assessment of the appropriate sentence
6 based on the facts presented in each case.
7

8 **Title 18 United States Code Section 3553(a)(1) Factors**

9 **History and Characteristics of Defendant**

10 Section 3553(a)(1) instructs courts to consider “the history and
11 characteristics of the defendant.” 18 U.S.C. Sec. 3553(a) (1). Now, after the
12 Supreme Court’s decision in Booker, District Courts are able to adequately
13 consider aspects of defendants’ lives that were previously prohibited
14 under the mandatory Guideline framework. Mr. Angstenberger’s
15 history and characteristics are such that a mandatory minimum sentence
16 should be imposed.
17

18 Mr. Angstenberger is 48 years old and was born in Buffalo, New
19 York. He resides in North Tonawanda and has only a minor criminal
20 record from the early 90s.

21 His biological father is the late Randy Fargo. His mother is Carolyn
22 Valentine. His mother married Thomas Angstenberger when he was
an infant, and Thomas adopted Michael. Thomas was a baker and died at

1
2 the young age of 57 from cancer. His mother is 65 years old and is a retired
3 accountant/bookkeeper.

4 Mr. Angstenberger has two half siblings. His brother Fredrick is 46
5 years old and resides in Amherst. He is employed as an executive for a
6 local business. His sister is a homemaker and resides in Niagara Falls. Mr.
7 Angstenberger has a good relationship with both his siblings.
8

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10 **Education and Work History:**

11 Mr. Angstenberger attended Maryvale Highschool until 11th grade.
12 He later received a GED and briefly attended Erie Community College.

13 Mr. Angstenberger was most recently employed as a warehouse
14 material handler. Prior to that, he held jobs as a seamer, a tire technician,
15 and a laborer.
16

17 **Current Relationships:**

18 Mr. Angstenberger has never been married and is not currently in a
19 relationship.
20

21 **Physical Condition/Mental Health:**

22 Mr. Angstenberger is in poor physical health. He suffers from
bipolar disorder, anxiety, asthma, obesity, lower back pain, sleep apnea

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2 and has had multiple concussions.

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5 CONCLUSION

6 Mr. Angstenberger is 48 years old and finds himself in significant
7 legal trouble. He is extremely ashamed of his behavior and feels disgusted
8 with himself. He has allowed his crimes to potentially destroy everything
9 meaningful to him and his family. In addition to facing a lengthy prison
10 sentence, his actions resulted in him being humiliated in front of his
11 friends, family and the community he resides in.

12 Mr. Angstenberger accepted responsibility from the start and never
13 tried to deny his guilt. He has been engaged in counseling at Endeavor
14 since his arrest, and he wants to remain engaged in mental health and sex
15 offender treatment so that he never repeats this behavior.

16 Mr. Angstenberger has a history of gainful employment, and he is
17 doing well on pretrial supervision. Most importantly, he is extremely
18 ashamed of his conduct. Through his counseling he realizes how his
19 actions contributed to the victimization of these young girls. He feels
20 "embarrassed" and "disgusted" with himself. He will likely never forgive
21 himself.
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3 In summary, this conviction has permanently affected Mr.
4 Angstenberger's life. He realizes that his actions could potentially take
5 him away from the things that mean the most to him, his mother and his
6 siblings. This has caused him to do much soul searching and reflecting on
7 how he wants to live the remainder of his life.

8 Mr. Angstenberger asks Your Honor to include in your
9 consideration Your Honor's own sense of what is a fair and just sentence
10 under all the circumstances, and respectfully requests a sentence that is
11 sufficient, but not greater than necessary. See *United States v. Jones*, 460
12 F.3d 191, 195 (2d Cir. 2006).
13

14 In light of the serious consequences already suffered, I am confident
15 that Mr. Angstenberger will never re-offend. His goals in life are simple.
16 He wants to be able to continue to address his physical/mental health
17 needs and spend time with his family. His mother is 65 years old and not
18 in the best of health. His biggest fear is that she won't be alive when he is
19 finished serving his sentence.
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For the foregoing reasons, Mr. Angstenberger respectfully requests
the Court to sentence him to a 5-year sentence.

DATED: Buffalo, New York November 10, 2023

Respectfully Submitted,

s/ Dominic Saraceno

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8

9 **CERTIFICATE OF SERVICE**

10 **22-CR-186**

11 I hereby certify that on November 10, 2023, I electronically filed the
12 Foregoing with the Clerk of the District Court using its CM/ECF system, which
13 would then electronically notify the following EM/EF Participant on this case:

14 Charles Kruly, AUSA
15 138 Delaware Avenue
16 Buffalo, New York 14202

17 And, I hereby certify that I have emailed the document to the following non-
18 CM/ECF participant(s).

19 ASHLEY MCNEAL
20 United States Probation Officer
21 U.S. Probation Department
22 234 U.S. Courthouse
68 Court Street
Buffalo, New York 14202

s/Dominic Saraceno

DOMINIC SARACENO